

1 WOLF, GREENFIELD & SACKS, P.C.

2 Michael A. Albert (Admitted *Pro Hac Vice*)

3 Mass. B.B.O No. 558566

4 malbert@wolfgreenfield.com

5 Hunter D. Keeton (Admitted *Pro Hac Vice*)

6 Mass. B.B.O No. 660609

7 hkeeton@wolfgreenfield.com

8 Stuart V. C. Duncan Smith (Admitted *Pro Hac Vice*)

9 Mass. B.B.O No. 687976

10 sduncansmith@wolfgreenfield.com

11 600 Atlantic Avenue

12 Boston, Massachusetts, 02210

13 Tel: (617) 646-8000 Fax: (617) 646-8646

14 PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

15 Victor M. Felix (SBN: 179622)

16 victor.felix@procopio.com

17 525 B Street, Suite 2200

18 San Diego, California, 92101

19 Tel: (619) 515-3229 Fax: (619) 744-5409

20 Attorneys for Defendant and Counter Claimant Acacia Communications, Inc.

21 UNITED STATES DISTRICT COURT
22 SOUTHERN DISTRICT OF CALIFORNIA

23 **ViaSat, Inc.,**

24 *a Delaware corporation,*

25 Plaintiff

26 and Counter Defendant,

27 v.

28 **Acacia Communications, Inc.,**

a Delaware corporation,

Defendant

and Counter Claimant

Case No. 3:16-cv-00463-BEN-JMA

**ACACIA COMMUNICATIONS,
INC.'S MOTION TO FILE UNDER
SEAL DOCUMENTS ASSOCIATED
WITH ITS FEBRUARY 16, 2018
FILINGS**

Judge: Hon. Roger T. Benitez

Mag. Judge: Hon. Jan M. Adler

Date: February 26, 2018 and
March 5, 2018

Time: 10:30 a.m.

Courtroom: 5A

Under Federal Rule of Civil Procedure 26(c), Local Rule 79.2(c), ECF Administrative Policies and Procedures 2(j), the Stipulated Protective Order § 1 (D.I. 29), and Magistrate Judge Adler’s Chamber Rules at 3, Defendant and Counter Claimant Acacia Communications, Inc. (“Acacia”) submits this motion to file under seal portions of four memoranda it is filing today, and certain of exhibits attached to Declarations of Stuart V. C. Duncan Smith in connection with the memoranda.

ARGUMENT

Certain limited portions of memoranda and certain of the exhibits attached to the Declarations of Stuart V. C. Duncan Smith in connection with those memoranda contain confidential information that one or both of the parties have designated as Confidential or Highly Confidential – Attorneys’ Eyes Only under the Stipulated Protective Order (D.I. 29), disclosure of which would harm the competitive standing of the parties and could be used to the parties’ competitive disadvantage outside of this case.

Acacia seeks to seal the following documents:

- a. Portions of Acacia Communications, Inc.’s Opposition to ViaSat, Inc.’s Motion to Exclude Expert Testimony, which contains information that ViaSat and Acacia have designated as Highly Confidential – Attorneys’ Eyes Only. These portions contain confidential technical and business information of both ViaSat and Acacia regarding the parties’ alleged trade secrets, accused products, and business dealings.
- b. Portions of Acacia Communications, Inc.’s Opposition to ViaSat, Inc.’s Motion for Summary Judgment on Acacia’s Counterclaim for Patent Misappropriation. These portions contain confidential technical information of both ViaSat and Acacia regarding the parties’ alleged trade secrets and accused products.
- c. Portions of Acacia Communications, Inc.’s Opposition to ViaSat, Inc.’s Motion for Partial Summary Judgment, which contains information that

ViaSat and Acacia have designated as Highly Confidential – Attorneys’ Eyes Only. These portions contain confidential technical and business information of both ViaSat and Acacia regarding the parties’ alleged trade secrets, accused products, and business dealings.

- d. Portions of Acacia Communications, Inc.’s Reply in Support of its Motion for Summary Judgment Regarding No Liability, which contains information that ViaSat and Acacia have designated as Highly Confidential – Attorneys’ Eyes Only. These portions contain confidential technical and business information of both ViaSat and Acacia regarding the parties’ alleged trade secrets, accused products, and business dealings.
- e. Exhibit 90 attached thereto, which is a copy of excerpts of the condensed transcript of the December 11, 2017 deposition of Dr. Alexander Vardy, and contains information that Acacia has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 90 contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused products as well as technical information that Acacia has identified as confidential.
- f. Exhibit 91 attached thereto, which is a copy of excerpts of the transcript of the December 15, 2017 deposition of Dr. Richard L. Koralek, and contains information that Acacia has designated as Confidential Source Code – Attorneys’ Eyes Only Information. Exhibit 91 contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused products as well as technical and source code information that Acacia has identified as confidential.
- g. Exhibit 92 attached thereto, which is a copy of excerpts of the condensed transcript of the July 25, 2017 deposition of William Thesling with attached errata sheet, and contains information that ViaSat has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 92 contains

discussion of ViaSat's alleged trade secrets as well as technical information from both parties that ViaSat has identified as confidential.

h. Exhibit 93 attached thereto, which is a copy of excerpts of the condensed transcript of the December 6, 2017 deposition of Dr. Marwan Hassoun, and contains information that ViaSat has designated as Highly Confidential – Attorneys' Eyes Only. Exhibit 93 contains discussion of ViaSat's alleged trade secrets as well as technical information from both parties that ViaSat has identified as confidential.

i. Exhibit 94 attached thereto, which is copy of excerpts of the condensed transcript of the December 13, 2017 deposition of Brent Bersin, and contains information that Acacia has designated as Highly Confidential – Attorneys' Eyes Only. Exhibit 94 contains discussion of both parties' accused products as well as the parties' business and financial information that Acacia has identified as confidential.

j. Exhibit 96 attached thereto, which is copy of a letter dated October 12, 2017 from Erika Warren to Stuart Duncan Smith regarding document productions, and contains ViaSat's confidential information. Exhibit 96 contains information regarding ViaSat's business practices and ViaSat's accused products.

k. Exhibit 97 attached thereto, which is a copy of excerpts of the condensed transcript of the November 30, 2017 deposition of Stephen D. Prowse, and contains information that ViaSat has designated as Highly Confidential – Attorneys' Eyes Only. Exhibit 97 contains discussion of both ViaSat's accused products as well as the ViaSat's business and financial information that ViaSat has identified as confidential.

l. Exhibit 102 attached thereto, which is a copy of Acacia Communications, Inc.'s Responses to ViaSat, Inc.'s Interrogatories (Set Two), dated September 22, 2017, and contains information that Acacia has designated

1 as Highly Confidential – Attorneys’ Eyes Only. Exhibit 102 contains
2 discussion of Acacia’s alleged trade secrets and business practices which
3 constitute technical and business information that Acacia has identified as
4 confidential.

5 m. Exhibit 103 attached thereto, which is a copy of Acacia Communications,
6 Inc.’s Trade Secret Identification, dated December 13, 2016, and contains
7 information that Acacia has designated as Highly Confidential –
8 Attorneys’ Eyes Only. Exhibit 103 contains discussion of Acacia’s
9 alleged trade secrets which constitute technical information that Acacia
10 has identified as confidential.

11 n. Exhibit 104 attached thereto, which is a copy of excerpts from the
12 condensed transcript of the September 13, 2017 deposition of Lawrence
13 Esker with attached errata sheet, and contains information that ViaSat
14 has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit
15 104 contains discussion of Acacia’s alleged trade secrets as well as
16 technical information from both parties that ViaSat has identified as
17 confidential.

18 o. Exhibit 105 attached thereto, which is a copy of excerpts from the
19 condensed transcript of the July 25, 2017 deposition of William Thesling
20 with attached errata sheet, and contains information that ViaSat has
21 designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 105
22 contains discussion of Acacia’s alleged trade secrets as well as technical
23 information from both parties that ViaSat has identified as confidential.

24 p. Exhibit 106 attached thereto, which is a copy of excerpts from the
25 condensed transcript of the June 30, 2017 deposition of Matthew Nimon
26 with attached errata sheet, and contains information that ViaSat has
27 designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 106
28

- 1 contains discussion of Acacia's alleged trade secrets as well as technical
2 information from both parties that ViaSat has identified as confidential.
- 3 q. Exhibit 112 attached thereto, which is a copy of Exhibit C to IP Core
4 Development & License Agreement No. TG1102009 from ViaSat, Inc.,
5 entered as Deposition Exhibit No. 30, and contains information that
6 ViaSat has designated as Highly Confidential – Attorneys' Eyes Only.
7 Exhibit 112 contains discussion of ViaSat and Acacia's technical
8 information and Acacia's alleged trade secrets that ViaSat has identified
9 as confidential.
- 10 r. Exhibit 113 attached thereto, which is a copy of an email from Bhupen
11 Shah to Ted Gammell, dated from February 23, 2012 through May 3,
12 2012, and contains information that ViaSat has designated as Highly
13 Confidential – Attorneys' Eyes Only. Exhibit 113 contains discussion of
14 ViaSat's business practices as well as Acacia's alleged which constitute
15 business and technical information that ViaSat has identified as
16 confidential.
- 17 s. Exhibit 114 attached thereto, which is a demonstrative exhibit showing
18 comparisons between patents in ViaSat's patent family, Acacia's Trade
19 Secrets, and an exhibit to a License Agreement between ViaSat and
20 Acacia. Exhibit 114 contains information that Acacia has designated as
21 Highly Confidential – Attorneys' Eyes Only and contains discussion and
22 analysis of Acacia's alleged trade secrets.
- 23 t. Exhibit 115 attached thereto, which is a copy of excerpts from the
24 condensed transcript of the August 16, 2017 deposition of Dr. Benny
25 Mikkelsen, and contains information that Acacia has designated as Highly
26 Confidential – Attorneys' Eyes Only. Exhibit 115 contains discussion of
27 ViaSat's alleged trade secrets and Acacia's accused products as well as the
28

1 parties' technical and business information that Acacia has identified as
2 confidential.

3 u. Exhibit 116 attached thereto, which is a copy of excerpts from
4 condensed transcript of the August 10, 2017 deposition of Dr. Gary D.
5 Martin, and contains information that Acacia has designated as Highly
6 Confidential – Attorneys' Eyes Only. Exhibit 116 contains discussion of
7 ViaSat's alleged trade secrets and Acacia's accused products as well as the
8 parties' technical and business information that Acacia has identified as
9 confidential.

10 v. Exhibit 117 attached thereto, which is a copy of an email from Russell
11 Fuerst to Phil Mar, dated October 21, 2016 and marked as Deposition
12 Exhibit 662, and contains information that ViaSat has designated as
13 Highly Confidential – Attorneys' Eyes Only. Exhibit 117 contains
14 discussion of technical and business information that ViaSat has
15 identified as confidential.

16 w. Exhibit 118 attached thereto, which is a copy of excerpts from the
17 condensed transcript of the October 13, 2017 deposition of Prakash
18 Chitre with attached errata sheet, and contains information that ViaSat
19 has designated as Highly Confidential – Attorneys' Eyes Only. Exhibit
20 118 contains discussion of ViaSat's business and financial information
21 that ViaSat has identified as confidential.

22 x. Exhibit 119 attached thereto, which is a copy of the Expert Report of Dr.
23 Paul R. Pruncal, dated October 27, 2017, and contains information that
24 Acacia has designated as Highly Confidential – Attorneys' Eyes Only.
25 Exhibit 119 contains discussion of Acacia's alleged trade secrets and
26 ViaSat's accused products as well as technical information that Acacia has
27 identified as confidential.
28

- 1 y. Exhibit 120 attached thereto, which is a copy of an email from Jane
2 Smith to Lee Ann Roling-Bauder, et al., dated July 26, 2011 and marked
3 as Deposition Exhibit 121, and contains information that ViaSat has
4 designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 120
5 contains discussion of information regarding ViaSat’s business practices
6 that ViaSat has identified as confidential.
- 7 z. Exhibit 121 attached thereto, which is a copy of an email from Fan Mo
8 to Andy Lincoln and Bill Thesling, dated March 17, 2010, and contains
9 information that ViaSat has designated as Highly Confidential –
10 Attorneys’ Eyes Only. Exhibit 121 contains discussion of information
11 regarding ViaSat’s technical and business practices that ViaSat has
12 identified as confidential.
- 13 aa. Exhibit 122 attached thereto, which is a copy of excerpts from the
14 condensed transcript of the September 14, 2017 deposition of Fan Mo
15 with attached errata sheet, and contains information that ViaSat has
16 designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 122
17 contains discussion of ViaSat’s business and technical information that
18 ViaSat has identified as confidential.
- 19 bb. Exhibit 123 attached thereto, which is a copy of an email from Eric
20 Swanson to Raj Shanmugaraj, et al., dated March 18, 2010, and contains
21 information that Acacia has designated as Highly Confidential –
22 Attorneys’ Eyes Only. Exhibit 123 contains discussion of information
23 regarding ViaSat’s technical and business practices that Acacia has
24 identified as confidential.
- 25 cc. Exhibit 124 attached thereto, which is a copy of an email from Bhupen
26 Shah to Benny Mikkelsen, et al., dated March 18, 2010, and contains
27 information that Acacia has designated as Highly Confidential –
28 Attorneys’ Eyes Only. Exhibit 124 contains discussion of the parties’

business information and the IP Core Development and License Agreement that Acacia has identified as confidential.

- dd. Exhibit 125 attached thereto, which is a copy of an email from Ted Gammell to Prakash Chitre and Russell Fuerst dated April 14, 2010 with a copy of the ACACIA No-Compete Summary attached, and contains information that ViaSat has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 125 contains discussion of the parties’ business information and the IP Core Development and License Agreement that ViaSat has identified as confidential.
- ee. Exhibit 126 attached thereto, which is a copy of excerpts from the condensed transcript of the September 28, 2017 deposition of Bhupendra Shah, and contains information that Acacia has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 126 contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused products as well as the parties’ technical and business information that Acacia has identified as confidential.
- ff. Exhibit 127 attached thereto, which is a copy of excerpts from the condensed transcript of the October 11, 2017 deposition of Dr. Christian J. Rasmussen, and contains information that Acacia has designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 127 contains discussion of ViaSat’s alleged trade secrets and Acacia’s accused products as well as the parties’ technical and business information that Acacia has identified as confidential.
- gg. Exhibit 128 attached thereto, which is a copy of an email from Raj Shanmugaraj to Bhupen Shah, Christian Rasmussen, and Benny Mikkelsen dated November 12, 2013, and contains information that Acacia has designated as Highly Confidential – Attorneys’ Eyes Only.

1 Exhibit 128 contains discussion of Acacia's business and technical
2 information that Acacia has identified as confidential.

3 hh. Exhibit 129 attached thereto, which is a copy of an email from Raj
4 Shanmugaraj to Bhupen Shah, Christian Rasmussen, and Benny
5 Mikkelsen dated February 26, 2014, and contains information that Acacia
6 has designated as Highly Confidential – Attorneys' Eyes Only. Exhibit
7 129 contains discussion of Acacia's business and technical information
8 that Acacia has identified as confidential.

9 ii. Exhibit 130 attached thereto, which is a copy of excerpts from the
10 condensed transcript of the December 12, 2017 deposition of Dr. Ivan
11 Djordjevic, and contains information that ViaSat has designated as
12 Highly Confidential – Attorneys' Eyes Only. Exhibit 130 contains
13 discussion of Acacia's alleged trade secrets and ViaSat's accused products
14 as well as technical information from both parties that ViaSat has
15 identified as confidential.

16 jj. Exhibit 131 attached thereto, which is a copy of an email from Sameep
17 Dave to Bhupen Shah, et al., dated February 23, 2010 and marked as
18 Deposition Exhibit 344, and contains information that ViaSat has
19 designated as Highly Confidential – Attorneys' Eyes Only. Exhibit 131
20 contains discussion of Acacia's alleged trade secrets and the parties'
21 technical information that ViaSat has identified as confidential.

22 kk. Exhibit 132 attached thereto, which is a copy of ViaSat's "Functional
23 Specifications for Demodulator / DSP ASCI IP Core for Polo," marked
24 as Deposition Exhibit 345, and contains information that ViaSat has
25 designated as Highly Confidential – Attorneys' Eyes Only. Exhibit 132
26 contains discussion of Acacia's alleged trade secrets and the parties'
27 technical information that ViaSat has identified as confidential.
28

- 1 ll. Exhibit 133 attached thereto, which is a copy of excerpts from the
2 condensed transcript of the August 8, 2017 deposition of Lawrence S.
3 Pellach, and contains information that Acacia has designated as Highly
4 Confidential – Attorneys’ Eyes Only. Exhibit 133 contains discussion of
5 ViaSat’s alleged trade secrets and business practices as well as the parties’
6 technical and business information that Acacia has identified as
7 confidential.
- 8 mm. Exhibit 134 attached thereto, which is a copy of excerpts from the
9 condensed transcript of the July 26, 2017 deposition of Russell Fuerst,
10 and contains information that ViaSat has designated as Highly
11 Confidential – Attorneys’ Eyes Only. Exhibit 134 contains discussion of
12 the parties’ business information that ViaSat has identified as
13 confidential.
- 14 nn. Exhibit 135 attached thereto, which is a copy of an email from Ted
15 Gammell to Scott Stiefel dated August 18, 2010 and marked as
16 Deposition Exhibit 123, and contains information that ViaSat has
17 designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 135
18 contains discussion of the parties’ business information and the IP Core
19 Development and License Agreement that ViaSat has identified as
20 confidential.
- 21 oo. Exhibit 136 attached thereto, which is a copy of excerpts from the
22 condensed transcript of the September 12, 2017 deposition of Sameep
23 Dave, and contains information that ViaSat has designated as Highly
24 Confidential – Attorneys’ Eyes Only. Exhibit 136 contains discussion of
25 ViaSat’s alleged trade secrets as well as technical and business
26 information that ViaSat has identified as confidential.
- 27 pp. Exhibit 137 attached thereto, which is a copy of Exhibit B to the IP Core
28 Development and License Agreement No. TG1102009 entered as

1 Deposition Exhibit No. 343, and contains information that ViaSat has
2 designated as Highly Confidential – Attorneys’ Eyes Only. Exhibit 137
3 contains discussion of the parties’ technical and business information that
4 ViaSat has identified as confidential.

5 qq. Exhibit 138 attached thereto, which is a copy of excerpts from the
6 condensed transcript of the December 6, 2017 deposition of Marwan
7 Hassoun, Ph.D., and contains information that ViaSat has designated as
8 Highly Confidential – Attorneys’ Eyes Only. Exhibit 138 contains
9 discussion of ViaSat’s alleged trade secrets as well as technical
10 information from both parties that ViaSat has identified as confidential.

11 Acacia will electronically file public versions of Acacia’s memoranda with
12 confidential information redacted. Therefore, this request is narrowly tailored to
13 protect only the information that is confidential.

14 While the public generally enjoys the right of access to court records, the
15 public’s right to access to court records “is not absolute,” and documents are properly
16 filed under seal where disclosure would harm a party by forcing it to disclose trade
17 secrets or other valuable confidential proprietary business information. *See, e.g., Nixon*
18 *v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *In re Elec. Arts, Inc.*, 298 F. App’x
19 568, 569-70 (9th Cir. 2008).

20 “Where a party shows that its documents contain sources of business
21 information that might harm its competitive standing, the need for public access to the
22 records is lessened.” *Algarin v. Maybelline, LLC*, No. 12-3000, 2014 WL690410, at *3
23 (S.D. Cal. Feb. 21, 2014). Courts must ensure that their records are not used “as
24 sources of business information that might harm a litigant’s competitive standing.”
25 *Nixon*, 435 U.S. at 598; *see also Bauer Bros. LLC v. Nike, Inc.*, No. 09500, 2012
26 WL1899838, at *3-4 (S.D. Cal. May 24, 2012) (granting motion to seal non-public
27 financial data); *Davis v. Soc. Serv. Coordinators, Inc.*, No. 10-023 72, 2012 WL 1940677, at
28

1 *3 (E.D. Cal. May 29, 2012) (noting that “[g]ood cause to seal is generally found where
2 the disclosure of proprietary information could cause a party competitive injury”).

3 Good cause to file under seal exists because the information Acacia seeks to seal
4 has been identified as confidential by Acacia, ViaSat, and third parties. Publicly filing
5 the information would prejudice Acacia, ViaSat, and third parties by revealing technical
6 and financial information that could be used for competitive advantage outside of this
7 case. Therefore, there is good cause to seal this information.

8 **CONCLUSION**

9 For the foregoing reasons, Acacia respectfully requests that the Court seal the
10 portions of Acacia’s Memorandum and the documents listed above. A Proposed
11 Order will be emailed to efile_benitez@casd.uscourts.gov and
12 efile_adler@casd.uscourts.gov.

13
14 Dated: February 16, 2018

Respectfully Submitted,

15 WOLF, GREENFIELD & SACKS, P.C.

16
17 By: *s/Michael A. Albert*

Michael A. Albert

18 Hunter D. Keeton

19 Stuart V. C. Duncan Smith

20 Attorneys for Defendant and Counter
21 Claimant Acacia Communications, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that today I served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that am causing the foregoing document to be served by electronic means via email upon counsel for ViaSat, Inc., per the agreement of counsel.

Date: February 16, 2018 s/Michael A. Albert
Michael A. Albert